

Circuit Court for Prince George's County
Case No. CT131081X

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 2056

September Term, 2023

MICHAEL ANTHONY NASH

v.

STATE OF MARYLAND

Zic,
Ripken,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 6, 2024

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Michael Anthony Nash, appellant, appeals from the denial, by the Circuit Court for Prince George’s County, of a motion to correct illegal sentence. For the reasons that follow, we shall affirm the judgment of the circuit court.

On July 18, 2013, Mr. Nash was charged by indictment with attempted first degree murder of Daniel Lipscomb, III, and related offenses. On November 13, 2013, the prosecutor sent to defense counsel a letter in which the prosecutor stated, in pertinent part:

This letter memorializes the plea agreement offered by the State in this case. If the Defendant accepts this offer, please have him execute it in the spaces provided below. . . . The terms of the agreement are as follows:

The Defendant agrees to plead guilty to the following count . . . :

* * *

Count Two: Attempted Second Degree Murder of Daniel Lipscomb

- Sentence upon plea: Thirty (30) years suspend all but an executed sentence between twelve (12)^[1] and twenty (20) years, with the first ten . . . years being mandatory, due to this being your client’s second crime of violence conviction. At this time, the State believes the guidelines to be twelve (12) years to twenty (20) years. The Defendant will be placed on five (5) years of supervised probation upon release.

At the time of the entry of the plea, the State will proffer the facts relating to all pending charges. As a condition of this agreement, your client must make a full admission of guilt and may not offer a *nolo contendere* plea. The remaining counts will be entered *nolle prosequi* after sentencing in this case. . . . The defendant agrees as part of the plea agreement to request a Presentence Investigation (PSI) by Parole and Probation after accepting the plea and prior to sentencing. The defendant acknowledges that the PSI may calculate the guidelines differently than the State has calculated the guidelines. If the PSI uncovers information in the defendant’s background that was not known to the State, and therefore not included in its calculations,

¹This number was originally “fifteen (15).” On some later date, the number was changed to “twelve (12),” and the change was initialed by both the prosecutor and defense counsel.

the defendant agrees to be sentenced within the middle and the top of the higher guidelines.

The State believes that your client is a major offender. He has a 1998 conviction for manslaughter, a 1994 conviction for unauthorized use of a vehicle, a 1995 conviction for possession of cocaine, a 2007 conviction for possession of marijuana, and a 2011 conviction for second degree assault. Your client was on probation for the last matter when this incident occurred. Additionally, he had a previous probation violation. Therefore, your client has an offender score of seven (7).

This agreement supersedes any prior understanding, promises, or conditions between the State and the Defendant and constitutes the complete plea agreement in this case. There are no other agreements, promises, undertakings or understanding[s] between the Defendant and the State, other than those set for in this agreement, and none will be entered into unless in writing and signed by all parties.

If the Defendant fully accepts each and every term and condition of this letter please sign and have the Defendant sign the original and return it to me promptly.

On January 27, 2014, Mr. Nash signed the prosecutor's letter, stating: "I have read this agreement and carefully reviewed every part of it with my attorney. I understand it, and I voluntarily agree to it. I understand this plea agreement, and I will voluntarily agree to it. I am completely satisfied with the representation of my attorney." Defense counsel also signed the letter, stating: "I am Mr. [Nash's] attorney. I have carefully reviewed every part of this agreement with him. To my knowledge, his decision to enter into this agreement is an[] informed and voluntary one."

That same day, the parties appeared before the court and filed the plea agreement signed by Mr. Nash and defense counsel. The parties also filed with the court a "Waiver of Rights at Plea," signed by Mr. Nash and defense counsel, and stating in pertinent part

that “[p]ursuant to [the] plea,” Mr. Nash’s “maximum exposure” was “20 y[ears].” Mr. Nash subsequently submitted a plea of guilty to attempted second degree murder.

On March 6, 2014, the State filed a “Memorandum in Aid of Sentencing,” in which it recommended a sentence of thirty years, all but twenty years suspended. On March 13, 2014, Mr. Nash, by and through defense counsel, filed a “Sentencing Memorandum” in which counsel asserted that the “guidelines range is 10 to 18 years,” and asked the court to impose an executed term of imprisonment of fifteen years. Defense counsel attached to the memorandum a Sentencing Guidelines Worksheet in which she calculated the guidelines range to be ten to eighteen years. On April 11, 2014, the court sentenced Mr. Nash to a term of imprisonment of thirty years, all but twenty years suspended.

On November 17, 2023, Mr. Nash filed the motion to correct illegal sentence, in which he contended that the guidelines range was not twelve to twenty years, but ten to eighteen years. Mr. Nash further contended that by sentencing him to an executed term of imprisonment of twenty years, the court breached the plea agreement, and hence, his sentence is “inherently illegal.” *See Cuffley v. State*, 416 Md. 568, 586 (2010) (finding illegal “a sentence that exceeded” the terms of a plea agreement). The court denied the motion.

Mr. Nash contends that the court erred in denying the motion, because the sentencing court erred in “failing to determine what the guidelines were,” “imposing a sentence greater than the guidelines,” and “failing to inform Mr. Nash that the court was not going to adopt the plea agreement[] and . . . give [him] the opportunity to withdraw the plea.” We disagree. Prior to the plea hearing, the State offered Mr. Nash a plea agreement

under which he would receive a sentence of thirty years, all but an executed term of imprisonment of between twelve and twenty years suspended, and indicated its belief that the guidelines range was twelve years to twenty years. The State further asserted that there were “no other agreements, promises, undertakings or understanding[s] between [Mr. Nash] and the State, other than those set for in [the] agreement,” and that “none [would] be entered into unless in writing and signed by all parties.” On the day of the plea, Mr. Nash indicated his acceptance of these terms by signing the State’s letter, affirming that he had “reviewed every part of it with” defense counsel, understood the proposed agreement, and “voluntarily agree[d] to it.” Defense counsel also affirmed that Mr. Nash’s “decision to enter into this agreement [was] informed and voluntary.” Mr. Nash also signed the “Waiver of Rights at Plea,” which explicitly stated that pursuant to the plea, his “maximum exposure” was twenty years. Although defense counsel subsequently challenged the calculation of the guidelines range, at no time did the State change its position that the range was twelve to twenty years, or specify any circumstances under which it would agree to a reduction of the range. From these circumstances, we conclude that the sentencing court did not breach the plea agreement, and hence, the court did not err in denying the motion to correct illegal sentence.

**JUDGMENT OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**